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July 2, 2021

VIA ECF
Honorable John P. Cronan
U.S. District Court for the Southern District of New York
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: Preliminary Injunction Hearing in *Roc-A-Fella Records, Inc. v. Damon Dash*, No. 1:21-cv-05411-JPC

Dear Judge Cronan:

I represent Roc-A-Fella Records, Inc. At the hearing yesterday, the Court asked "what other evidence plaintiff ('RAF, Inc.') ha[s] that Mr. Dash was, in fact, trying to sell the copyright interest in the album [*Reasonable Doubt*]." (July 1, 2021 Hearing Tr. 10:24-11:1, Exhibit A.) In response, I referenced, among other things, facts showing that Dash had a significant financial motive to sell RAF, Inc.'s rights in *Reasonable Doubt*. (*See* Ex. A at 11:2-14:12.) For example, I stated that Dash has several judgments and liens against him; that Dash has admitted he has no salary or income; and that Judge Jed S. Rakoff found his testimony to be "unworthy of belief" in another lawsuit pending in this District. (*See id.*) So the record is complete, I write to provide the documents supporting these statements:

- Attached as Exhibit B is a list of currently known judgments and liens against Dash.

- Attached as Exhibit C is a June 26, 2019 declaration submitted by Dash in *Brooks v. Dash*, 1:19-cv-01944-JSR (S.D.N.Y.), in which he states, among other things, that his "working capital and source of income is essentially gone" and that it would "cause great financial strain" if he were required to travel to Boston for a deposition. (Ex. C at 1-2.)

- Attached as Exhibit D is a November 12, 2019 declaration submitted by Dash in *Brooks v. Dash* in which he states, among other things, that he does "not have a salary or income," that his "income streams have all been garnished or restrained," and that it is "very difficult" for him to address his "mounting bills." (Ex. D at 1-2.)

- Attached as Exhibit E is a January 31, 2020 Order from *Brooks v. Dash* in which Judge Rakoff found that Dash (and his company Poppington LLC) had "failed to comply with the terms of the [court's] injunction," even though the court had given Dash a "clear directive." (Ex. E at 1-2.)

- Attached as Exhibit F are April 14, 2020 Findings of Fact and Conclusion of Law from *Brooks v. Dash* in which Judge Rakoff found "Dash's testimony to be unworthy of belief." (Ex. F at 3.) Judge Rakoff noted that Dash "repeatedly disrupted the trial testimony" by "shouting out answers to questions directed at [a] witness, loudly accusing the witness of 'lying,' and repeatedly making gestures and uttering unpleasant noises." (*Id.* at 3 n.3.) Ultimately, Judge Rakoff found against Dash in the amount of $300,000. (*Id.* at 20-21.)

- Attached as Exhibit G is a May 16, 2020 Memorandum Order in *Brooks v. Dash* in which Judge Rakoff stated that he "ha[d] no confidence in [Dash's] ability (or willingness) to pay the judgment" and that "the collection process for plaintiff will be challenging and complex." (Ex. G at 4-5.)

- Attached as Exhibit H is an April 28, 2021 Order re Plaintiff's Motion for Partial Summary Judgment in *Bunn v. Dash*, No. 20-cv-7389-DMG(JCx) (C.D. Cal.), in which the Honorable Dolly M. Gee ruled that it was "undisputed" that Dash had "participated in obtaining [the property of a photographer that he hired] and then failed to return it upon request." (Ex. H at 6.) Accordingly, Judge Gee held that Dash had "wrongfully dispossesse[d]" the plaintiff of her property. (*Id.* at 4.)

- Attached as Exhibit I is a November 20, 2019 article from the *Daily Mail* reporting that Dash "was arrested in connection with $404,000 in unpaid child support."

Respectfully submitted,

/s/ Alex Spiro

Alex Spiro

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

ROC-A-FELLA RECORDS, INC.,

Plaintiff,

v. 21 Civ. 5411 (JPC)

DAMON DASH,

Defendant.

----------x

New York, N.Y.
July 1, 2021
10:00 a.m.

Before:

HON. JOHN P. CRONAN,

District Judge

APPEARANCES

QUINN EMANUEL URQUHART & SULLIVAN, LLP
Attorneys for Plaintiff
BY: ALEXANDER SPIRO
LUKE NIKAS

TURTURRO LAW, P.C.
Attorneys for Defendant
BY: NATRAJ BHUSHAN
ERIC HOWARD

(Case called)

THE DEPUTY CLERK: Can counsel, starting with the plaintiff, please state your name for the record.

MR. SPIRO: Good morning, your Honor. This is Alex Spiro and Luke Nikas from Quinn Emanuel Urquhart & Sullivan.

THE COURT: Good morning, Mr. Spiro and Mr. Nikas.

MR. BHUSHAN: Good morning, your Honor. This is Natraj Bhushan from Turturro Law appearing for the defendant. I also have my co-counsel Eric Howard here as well.

THE COURT: Good morning, Mr. Bhushan and Mr. Howard.

Also, I should note for anyone in the well of the courtroom, it is certainly your choice, but if you are vaccinated, you are welcome to take off your mask. I don't want to be the only one who is taking advantage of our new rules over here.

So thank you all for coming in. I wanted to do this conference in person. I indicated this at the prior court appearance, if we received opposition from the defendant to injunctive relief. The response kind of fell in between. There was technically an opposition to injunctive relief, but it also seemed like the parties may be closer to being in agreement, and a typical opposition, folks may be talking a little bit across each other. So I thought this in-person proceeding might be productive.

Before I get to that, let me just quickly, for the

record, state where we are and recite the correct brief background and history of this case. This case was initiated on June 18. The plaintiff, Roc-A-Fella Records, filed a complaint as well as a proposed order to show cause and temporary restraining order. In substance, the complaint alleges that the defendant, Damon Dash, minted what is called a non-fungible token, properly referred to as an NFT, of Shawn Carter's, known as Jay-Z, debut album Reasonable Doubt. Mr. Dash was scouting for a venue on which to sell that NFT. In particular, there was a discussion of an auction house called SuperFarm, which it was believed he was trying to do so.

Three days after that, on June 21, I granted the requested temporary restraining order. That order enjoined the defendant in the typical TRO language, anyone acting in that active concert with him from altering, selling, assigning, encumbering, entrapping with anyone or otherwise disposing of a property interest in Reasonable Doubt. That included the album's copyright and it included any means such as auctioning an NFT, reflecting such an interest in the album.

I also scheduled today's show cause hearing to consider whether a preliminary injunction should be issued. And as I mentioned, the defendant had filed an opposition, in part, maintaining that he was not trying to sell a property interest in the album, but was looking to sell his interest in the plaintiff, Roc-A-Fella Records, of which he is a

shareholder. And the defendant also moved to disqualify the plaintiff's law firm Quinn Emanuel.

I think it probably makes sense to start with that second issue and that may inform whether or not Mr. Spiro and Mr. Nikas continue to sit at the table for the other part of this.

Is there anything else you wish to add, Mr. Bhushan, from your papers on the motion to disqualify?

MR. BHUSHAN: No, your Honor.

I think the record, more or less, contains the factual allegations in the declaration. That is all we have at the current juncture.

THE COURT: Let me just confirm. My understanding is that Quinn Emanuel never represented Mr. Dash as opposed to representing Roc-A-Fella Records.

MR. BHUSHAN: Your Honor, to the best of my knowledge, that's true.

THE COURT: To the best of your knowledge, did Quinn Emanuel ever obtain any privileged information as to Mr. Dash in the course of his representation of Roc-A-Fella?

MR. BHUSHAN: We don't have any evidence of that at the present current juncture. Obviously, this case is pre-discovery. Insofar as we have to plead an answer or counterclaim, that's information that we would be seeking to obtain.

THE COURT: Thank you.

Mr. Spiro, anything you wish to add?

MR. SPIRO: We think this is a pretty clear nonissue, so I don't need to add anything, if the court doesn't have any further questions for me.

THE COURT: Sure.

I would tend to agree with Mr. Spiro, at least at this point. Obviously, if things change, we could revisit this issue, if appropriate.

Let me briefly state for the record my reasons. In the Second Circuit, disqualification usually is ordered in two types of cases. One is where there is a conflict of interest that violates either Canon 5 or Canon 9 of the Code of Professional Responsibility, and that conflict undermines the court's confidence in the vigor of an attorney's representation of a client.

In the second scenario, I think is a little bit more common, where the attorney is at least potentially in a position to use privileged information concerning the other side through a prior representation.

Here, the allegations are largely that Quinn Emanuel, the law firm that is appearing for the plaintiff, cannot represent the plaintiff because it also serves as personal counsel to Shawn Carter, who is a shareholder of the plaintiff. Right now, I've seen no showing that this presents a conflict

of interest. And, in fact, it appears that Mr. Carter's interests are aligned with the plaintiff's interests. The mere fact of joint representation does not raise the risk of trial taint, when an attorney represents two or more clients who are similarly situated with regard to a lawsuit and if there are a number of cases that support that. Just to cite one from this district, Bulkmatic, B-u-l-k-m-a-t-i-c, Transport Company v. Pappas. It's a 2001 case in this district and at 2001 WL 504841.

Also, I note that the defendant has not alleged Quinn Emanuel is in a position to use information concerning Mr. Dash through a prior representation or, even as just discussed, that Quinn Emanuel ever represented Mr. Dash. And Mr. Dash did not allege that Quinn Emanuel represented Roc-A-Fella Records in any matters in which it supplied privileged information as to Mr. Dash.

So the motion to disqualify is therefore denied, and we should turn to the request for injunctive relief. I previewed that a little bit at the beginning, but I wanted to start to find out where we are, as it seems like there may be a degree of agreement between the parties.

Mr. Dash submitted a declaration that represented that he does not oppose any branch of the motion that seeks to prevent him or any shareholder of Roc-A-Fella Records from altering in any way, selling, assigning, pledging, encumbering,

contracting with regard to, or in any way disposing of the Reasonable Doubt copyright. He, in fact, acknowledges he doesn't own that copyright, but only opposes the motion to the extent it could be read to dispose of his interest, to prevent him from disposing of his interest in Roc-A-Fella Records.

The plaintiff's papers at docket 19 write that the plaintiff at least is not currently asking the court to prevent Mr. Dash from selling his interest in the company. I think it was said that's a fight for another day.

So maybe I'll start with you, Mr. Bhushan. Am I understanding that correctly; you are not opposing injunctive relief that would prevent your client from disposing of the copyright?

MR. BHUSHAN: Yes, your Honor.

We basically take the position that to preserve status quo, nothing is necessary because there was nothing minted, there was never an interest taken in the copyright.

Having said that, as your Honor just read, this fight for another day, as we read the TRO, which is being asked to more or less be extended to the preliminary injunction, this language "property interest in Reasonable Doubt," we would ask the court to clarify that so as to exclude any shares in Roc-A-Fella, Inc., and that is the matter of construction that we take issue with.

THE COURT: Mr. Spiro, if the preliminary injunction

were modified in that way and made clear that it only pertains to copyright the album and does not, at least at this stage, in any way restrict Mr. Dash from trying to sell his interest in the actual company, would there be any opposition to that modification?

MR. SPIRO: It would have to include property. It can't just be the word copyright. It would have to include all of the property interests that are contained within the LLC. So if it was clear as to that, then I think there is a meeting of the minds.

I would also just simply say that I don't believe the court can or should at least start, comma, explaining what it does not cover, because that is not the motion that is before your Honor.

But that being said, we would have no objection. I read the order and I was actually going to ask to understand what about this order is not clear. I read it as very clear. So one of the questions I had is, is there some word or sentence within this that is unclear. I don't see one.

But, of course, if the court wanted to make it even more clear, I would never object to such a thing, again, so long as it doesn't then start categorizing other property as making other rulings and findings about things that are not properly before the court as a case or controversy. That would be our position.

THE COURT: Mr. Bhushan, what language in particular are you concerned about, and do you have a proposal for the current order?

MR. BHUSHAN: Your Honor, it is the clause that basically begins "or in any way disposing of any property interest in Reasonable Doubt."

It is our understanding that, perhaps, everyone in the room agrees that this is what the language means, but to third parties, that is not clear, and that is the issue. Insofar as they have already once attempted to, as we submit in the declaration, tortiously interfere with the lawful sale of an interest.

And SuperFarm was persuaded, but even before the TRO, just based on similar language, to walk away, cease and desist in conducting an auction. This property interest language to us and to other third parties is a little vague. I mean, if the court wants to expressly carve out shares in Roc-A-Fella Records, Inc., or something to that effect, that is our clear property interest, then that would be acceptable to us.

But that's effectively what the complaint as to the opposition is about.

MR. SPIRO: Your Honor, if I may, just very briefly?

THE COURT: Please.

MR. SPIRO: So it's right. Because what ends up happening is, again, I think that the wording here is proper,

but it includes copyrights, trademarks, rights of personality, packaging. There is dozens of rights in residual rights. I know the court knows that.

The second thing I would just simply say is -- and I don't want to, given the tenor here and where we are at with the consent of the opposition, go too deep down the rabbit hole of fact. But we are only in this position where the order is being entered because we had to have an emergency hearing on an auction that was going to happen. That is clear as day in words written in English that was a collaboration that everybody understood that speaks for themselves.

I don't need to revisit all of that here today, but it is a little hard. It is a little hard to square taking that aggressive an action and quivering over the fact that the order can be interpreted in another way.

THE COURT: So let me just briefly ask you about that, Mr. Spiro.

The way I read Mr. Dash's declaration is, to really very much paraphrase, the auction house got it wrong. This press release was not what I was trying to do. They mischaracterized what was being auctioned. Obviously, the declaration from Mr. Carter included the press release, and we touched upon this a little bit last week.

But what else, what other information, what other evidence does the plaintiff have that Mr. Dash was, in fact,

trying to sell the copyright interest in the album?

MR. SPIRO: Sure.

So the press release begins by saying it is a collaboration. It then goes on for many pages and has many sentences and many words in which it makes clear, beyond all doubt, exactly what Mr. Dash was trying to do. This wasn't some, as he calls it -- and I think your Honor should note the word -- he calls it an internal memo. A press release is the opposite of an internal memo. This press release also included links to every social media, every site that it could.

You may also note, so, again, the words, the words, right. The other thing is, and I think your Honor can take account of all of these things, the auction was set to take place on the 23rd, two days before the anniversary, right? And it is clear, obviously, from all the papers, right, that I don't want to call it a sneak attack or a before the bell is rung, but it is two days before, and I would comment, a bit suspicious. And neither shareholder of Roc-A-Fella, neither other Roc-A-Fella, Inc. shareholder knew about it, right, which is clear. I think that circumstance the court can certainly question the veracity of the declaration.

In addition, it's not just the press release, right. There were lawyers that are involved, right, in both the minting and in responding to a cease and desist. And the lawyers does not respond to the cease and desist saying, Oh, my

goodness. We must have just crossed wires here. I must have misunderstood Mr. Dash when I wrote into this press release five times exactly what he was aiming to sell. That was a huge miscommunication. That is not what they said. You know what they said? Mr. Dash told us he owned this. That's what they said.

In addition, you will notice that Mr. Dash, in his declaration, talks about how SuperFarm had advertisements that they were then going to halt, right. So that means that the auction house is so confident, so confident that this auction is happening with exactly what they say in the press release, a day after the court issued the TRO, that they are spending money to advertise it.

All that Mr. Dash can sort of say is, reasons unknown, quote-unquote. Reasons unknown. It also doesn't really make any sense what he is saying in his declaration. I mean, basically he concedes every single possible fact regarding this matter, which is why they are consenting, in large part, to the action. But right, it is one of those admit what you can't deny and deny what you can't possibly admit situations, where he is now saying it was going to be a hologram of an LLC interest of shares. But, of course, that doesn't really make any sense, isn't something that would excite the marketplace, isn't something that would be the first ever, you know, most exciting auction in the history of the world.

He writes, his lawyers write in his e-mail back to me, he was intending to make $30 million, right. That is not the kind of auction -- it doesn't feel like the kind of auction where you're just saying, Oh, I own this LLC that might own other things, and that is not as interesting of a thing to go to marketplace with, which is why he didn't do that, which is why he tried to take corporate property.

And, you know, I think having sort of, you know, you see him running into the bank with the bank note that says, you know, this is what I intend to do in the form of a press release. And then, you know, the person who gets tackled on the door steps of the bank can say whatever they want. I appreciate that. He did.

But if the court also wants other information regarding Mr. Dash's motives and tendencies, you know, I have ample information about that. Mr. Dash has -- let's put it this way. This is not the first time that there have been certain issues regarding Mr. Dash. He is, in terms of his economic interest and his interests to, you know, his motivations to need money and need money quickly, there is ample evidence he is, I understand it from filings both in this courthouse and in other districts, he is number 40 on the New York delinquent taxpayer's list. He has dozens and dozens of liens and judgments against him. He is the defendant in dozens and dozens of civil cases. He has federal and state tax

liens. He has over a million dollars in unpaid child support, according to an attorney who has sued him in other districts. He has been arrested for failure to pay child support. He has admitted in declarations in this very courthouse that he does not have a salary or income.

He appeared before Judge Rakoff on a violation of a different court order in which Judge Rakoff found him, in Brooks v. Dash, 1-19-CV-1944, and it's both included in Judge Rakoff's sanctions order and also in his finding that Mr. Dash lacks credibility and civility, that he says, quote-unquote, this is Judge Rakoff, he finds Dash's testimony to be unworthy of belief.

THE COURT: I'm not sure we need to go more down that road here.

It would seem to me that the language in the proposed order covers the album and the interest in the album. But I'm not sure there is any problem in making that even clearer, in case there is any concern or confusion.

One thought I want to run by the parties is to add language that says something along the lines of "this injunctive relief does not extend to any efforts by the defendant to sell any shares in Roc-A-Fella Records, which is not a matter not presently before the court." Making clear that that is not an issue presently before the court, but also making clear that the injunctive relief only applies to the

album.

Mr. Bhushan, would that language satisfy your concern?

MR. BHUSHAN: Your Honor, insofar as it is understood that that includes in any manner, shape, or form. Because again, this NFT world may misconstrue what's before the court and what is not before the court and whether or not an actual sale of the shares or representation of the shares, we want encapsulate that as well. I think that is our concern.

But, your Honor, insofar as Mr. Spiro has argued the preliminary injunction, we would also like to be heard on that, I think.

THE COURT: Go ahead.

MR. BHUSHAN: With respect to Exhibit B, this, quote-unquote, press release, as the court can plainly see from the document, there is no date on it. It actually has an insert graphic picture on it. There is not a single quote cited from my client. So this is the only evidence that they are relying on. Their interpretation of, again, a draft memo versus the actual declaration from the party that was dealing with SuperFarm.

As the court is well aware, the Second Circuit requires a clear showing to grant this extraordinary and drastic relief. There is anything but in this case. That's all they had. Aside from that, we just heard character attacks. That is basically it.

But to your Honor's question, to the extent that it is clear that the shares are not included in this injunctive relief and there is no preclusion as to disposing of them, transferring them, encumbering them in any manner or means, that that would be acceptable to the defendant.

THE COURT: Now, I don't know if there would be a basis for the plaintiff to later make an application to prevent disposal of the shares. I don't know how the contract reads and if there would be a valid basis or not. But this order would have no impact one way or the other on that.

If there is an appropriate basis for such an application, I presume Mr. Spiro can make that application. But in terms of this, the injunctive relief here, and the case before me right now, it only concerns the copyright interest in the album itself. It doesn't concern Mr. Dash's efforts to sell his interest in the company itself.

Mr. Spiro, do you wish to be heard on that?

MR. SPIRO: Just briefly. Again, I'm going to mostly resist going down the rabbit hole, but I would simply say the other person who was involved in this act of trying to sell has confirmed that Mr. Dash represented what we are alleging he represented, and I don't see Mr. Dash's declaration, other than saying reasons unknown, got confused, in terms of the imminence. I mean, the press release says the date, and it was a day after the order was entered. I don't know if a TRO under

more urgent imminent circumstances. So I think we can all agree that if this did hit the marketplace and hit the worldwide web, it is a genie out of the bottle that can never be put back.

In terms of where we are in the language of the order, again, I would just simply say that it's tricky because the issues of whatever else he's looking to do are not before the court, as we have all discussed. So it is not a ripe case of controversy, and I can imagine many permutations which would affect that analysis, which is why we often wait for a case of controversy.

If there was a phrase that said "this order only pertains to what it pertains to," as if that is not already self-explanatory, and if Mr. Dash owns shares in something, again, if, if, and if there is no other encumbrance, and if, if, then this order doesn't speak to that.

But I don't want the phrase to be read as, you know, this is off limits and I, I as the judge, am saying this is for sure good to go, right. That is not really what this proceeding is, and we don't have an opportunity to respond to that.

I would just also say that it is not the case, and your Honor cited this when we were together before, WPIX, the Second Circuit case talks about considerations that a judge can take into account when issuing a TRO or an injunction. And one

of those does include the comfort that the court can have that the court's orders are going to be followed and that have monetary relief, if the defendant were to become a bad actor, right.

So all of the things that we have put on the record are for sure relevant to such a consideration, in our view, and I just don't think we should be too expansive in any changes to this order. Because I think it is going to lead to further confusion where the record today is clear, the transcript can be ordered and shown to anybody that Mr. Dash were to do business with. But the court's order and the actual proceeding in case of controversy is limited to its four corners.

Thank you. I have nothing further, your Honor.

THE COURT: Thank you.

I think given -- Mr. Bhushan, please correct me if I'm mischaracterizing the defense -- but the defendant's lack of an objection to a preliminary injunction that would be limited only to the property rights of the album, I think it would be appropriate to issue the preliminary injunction, but include language making clear that the order only pertains to that issue.

What I'll do, I'll give the parties until five p.m. today to propose language that you think would be appropriate.

Mr. Spiro, the TRO expires today, right?

MR. SPIRO: I believe your Honor set it to expire

today, yes.

THE COURT: So I will allow for a showing of finding, given the reasons we discussed, good cause to extend the TRO through tomorrow. So the parties should submit by close of business today proposed language that I will consider for the preliminary injunction and either adopt language.

Ideally, a joint submission would be preferred, but if that is not the case, I would consider the language and figure out what is appropriate to enter. But it should be essentially making clear that the injunctive relief here only pertains to what is before the court, and what I understand to be before me is the question of the copyright and Reasonable Doubt. It does not concern whether Mr. Dash is able to sell his property shares, to the extent whatever he may have in Roc-A-Fella Records, as the plaintiff pointed out in their papers, that's for another day.

Any questions for clarification from either of you?

Mr. Spiro?

MR. SPIRO: No, your Honor.

THE COURT: Mr. Bhushan?

MR. BHUSHAN: No, your Honor.

THE COURT: Great. Well, thank you, all.

I don't think there is anything else for us to take up today.

Is there from the plaintiff?

MR. SPIRO: No, your Honor.

THE COURT: And defendant?

MR. BHUSHAN: Nothing, your Honor.

THE COURT: All right. Thank you for coming in on relatively short notice, and I look forward to receiving submissions from the parties.

Have a good rest of the day and good holiday weekend.

MR. SPIRO: Thank you, your Honor.

MR. BHUSHAN: Thanks, Judge.

(Adjourned)

EXHIBIT B

Our databases, along with available public records on file with local, state, and federal courts, were searched for any judgments, liens, and bankruptcies naming our subject. This search, which was performed via *name match only*, returned the following results:

Debtor	Damon Dash
Creditor	Not Listed
Recording Date	2/19/21
Serial Lien Cert. #	21049316825
Amount	$77,991
Type	State Tax Lien; Placement
Kind of Tax	Franchise Tax
Disposition	Not Listed
County	Los Angeles, CA

Debtor	Damon Dash
Creditor	Internal Revenue Services
Recording Date	1/28/20
Filing #	20200103412
Serial Lien Cert. #	402568520
Amount	$147,430
Type	Federal Tax Lien
Fed. Tax Lien Area	Small Business
Disposition	Not Listed
County	Los Angeles, CA

Debtor	Damon Dash
Creditor	Internal Revenue Service
Recording Date	9/12/19
Filing #	20190940216
Tax Lien Cert. #	376306119
Amount	$3,579
Type	Federal Tax Lien
Fed. Tax Lien Area	Small Business
Disposition	Not Listed
County	Los Angeles, CA

Debtor	Damon A. Dash
Creditor	Commission of Tax and Finance
Recording Date	6/12/19
Filing #	NX27765A1

Back Support Amt.	$42,209
Type	Abstract of Support Judgment; Placement
Disposition	Not Listed
County	Putnam, NY

Debtor	Damon Dash
Creditor	State of New York
Filing Date	3/13/19
Filing #	E006701377W1489
Amount	$2,715
Type	State Tax Warrant
Disposition	Not Listed
County	Albany, NY

Debtor	Damon Dash
Creditor	State of New York
Filing Date	6/6/18
Filing #	E047383599W0015
Amount	$1,216
Type	State Tax Warrant
Disposition	Released 10/10/18
County	Albany, NY

Debtor	Damon Dash
Creditor	Rachel Roy
Filing Date	11/2/16
Filing #	3538086
Amount	$28,026
Type	Civil Judgment
Disposition	Not Listed
County	New York, NY

Debtor	Damon Dash
Creditor	Iroyrachel
Filing Date	9/30/15
Filing #	003404432
Amount	$354,985

Type	Civil Judgment
Disposition	Not Listed
County	New York, NY

Debtor	Damon Dash
Creditor	State of New York
Filing Date	4/7/15
Filing #	E006701377W1398
Amount	$2,167
Type	State Tax Warrant
Disposition	Not Listed
County	Putnam, NY

Debtor	Damon Dash
Creditor	Eastern Savings Bank FSB
Filing Date	7/29/13
Filing #	003132956
Amount	$765,746
Type	Civil Judgment
Disposition	Not Listed
County	New York, NY

Debtor	Damon A. Dash
Creditor	Assante Business Management
Filing Date	11/30/11
Court Case #	002917395
Amount	$199,849
Type	Civil Judgment
Disposition	Not Listed
County	New York, NY

Debtor	Damon Dash
Plaintiff	State of New York
Filing Date	8/27/11
Filing #	Not Listed
Alt. Court Case #	00517704792

Amount	$456
Type	State Tax Warrant
Disposition	Released 11/16/11
County	New York, NY

Debtor 1	Damon Dash
Debtor 2	Rachel Dash
Plaintiff	Sugar Warehouse
Filing Date	8/26/11
Court Case #	201114779
Amount	$62,157
Type	Civil Judgment
Disposition	Not Listed
County	Rensselaer, NY

Debtor	Damon Dash
Plaintiff	Internal Revenue Service
Filing Date	7/28/11
Filing #	Not Listed
Alt. Court Case #s	00516733822 & 800873911
Amount	$4,724
Type	Federal Tax Lien
Disposition	Not Listed
County	New York, NY

Debtor 1	Damon Dash
Debtor 2	Damon Dash Enterprises LLC
Plaintiff	Kerrison and Willo Ughby Ltd.
Filing Date	7/26/11
Court Case #	002860501
Amount	$330,038
Type	Civil Judgment
Disposition	Not Listed
County	New York, NY

Debtor 1	Damon Dash
Debtor 2	Rachel Dash
Plaintiff	Sugar Warehouse
Filing Date	7/6/11
Court Case #	002854256

Amount	$62,157
Type	Civil Judgment
Disposition	Released 10/26/11
County	New York, NY

Debtor	Damon Dash
Plaintiff	Internal Revenue Service
Filing Date	6/30/11
Filing #	Not Listed
Alt. Court Case #s	00515991874 & 793478111
Amount	$2,984,364
Type	Federal Tax Lien
Disposition	Not Listed
County	New York, NY

Debtor	Damon Dash
Plaintiff	Pryor Cashman LLP
Filing Date	3/23/10
Court Case #	T00284510
Amount	$29,901
Type	Civil Judgment
Disposition	Not Listed
County	Not Listed

Debtor	Damon Dash
Plaintiff	Pryor Cashman LLP
Filing Date	2/2/10
Court Case #	002657952
Amount	$29,901
Type	Civil Judgment
Disposition	Not Listed
County	New York, NY

Debtor 1	Damon Dash
Debtor 2	Rachel Dash
Plaintiff	Board of the Manager S of the ATA LA
Filing Date	1/26/10
Court Case #	002655775

Amount	$85,477
Type	Civil Judgment
Disposition	Released 9/21/11
County	New York, NY

Debtor	Damon Dash
Plaintiff	Benson Torres Kasowitz
Filing Date	2/6/09
Court Case #	002519420
Amount	$59,024
Type	Civil Judgment
Disposition	Not Listed
County	New York, NY

Debtor	Damon Dash
Creditor	Eastern Savings Bank FSB
Filing Date	8/18/08
Filing #	002450383
Amount	Not Listed
Type	Lis Pendens Notice
Disposition	Not Listed
County	New York, NY

Debtor	Damon Dash
Creditor	State of New Jersey
Filing Date	4/17/08
Filing #	DJ08923008
Alt. Court Case #	00482993136
Amount	$132,232
Type	State Tax Lien
Disposition	Not Listed
County	Mercer, NJ

Debtor	Damon Dash
Creditor	State of New York
Filing Date	3/29/08
Filing #	002405917
Alt. Court Case #	00483236842

Amount	$1,456
Type	State Tax Warrant
Disposition	Not Listed
County	New York, NY

Debtor 1	Damon Dash
Debtor 2	Damon Dash Enterprises I LLC
Creditor	25 West 39th Street Holdings LLC
Filing Date	12/11/07
Filing #	002351502
Amount	$95,265
Type	Civil New Filing
Disposition	Not Listed
County	New York, NY

Debtor	Damon Dash
Creditor	Not Listed
Recording Date	11/15/07
Filing #	Not Listed
Amount	$35,007
Type	Federal Tax Lien; Placement
Disposition	Not Listed
County	New York, NY

Debtor	Damon Dash
Creditor	Commissioner of Labor, State of New York
Filing Date	8/23/07
Filing #	Not Listed
Amount	$3,591.07
Type	Judgments Docket
Disposition	Not Listed
State	NY

Debtor	Damon Dash
Plaintiff	Internal Revenue Service
Filing Date	8/22/07
Filing #	20071968604
Serial Lien Cert. #	383942707

Alt. Court Case #	00470524299
Amount	$35,785
Type	Federal Tax Lien
Fed. Tax Lien Area	Small Business
Disposition	Released 6/16/08
County	Los Angeles, CA

Debtor	Damon Dash
Creditor	Internal Revenue Service
Filing Date	5/21/07
Filing #	2007051500244003
Alt. Court Case #	00480865062
Amount	$35,709
Type	Federal Tax Lien
Disposition	Released 6/20/08
County	New York, NY

Debtor	Damon Dash
Creditor	Internal Revenue Service
Filing Date	5/2/07
Filing #	2007042700714013
Amount	$35,629
Type	Federal Tax Lien
Disposition	Not Listed
County	New York, NY

Debtor	Damon Dash
Creditor	New York State Department of Taxation and Finance
Filing Date	4/6/07
Filing #	E006701377
Alt. Court Case #	00465020718
Amount	$2,093,618
Type	State Tax Warrant
Disposition	Not Listed
County	New York, NY

Debtor	Damon Dash
Creditor	State of New York
Filing Date	4/3/07
Filing #	002255587
Amount	$2,093,618

Type	State Tax Warrant
Disposition	Not Listed
County	New York, NY

Debtor	Damon Dash
Creditor	State of New York
Filing Date	8/12/06
Filing #	002163079
Amount	$12,225
Type	State Warrant Tax Release
Disposition	Released 12/28/06
County	New York, NY

Debtor	Damon Dash
Plaintiff	State of California
Filing Date	6/26/06
Filing #	061407404
Alt. Court Case #s	W300188127 & 00339654171
Amount	$3,666
Type	State Tax Lien
Kind of Tax	Unemployment Insurance
Disposition	Released 2/9/07
County	Los Angeles, CA

Debtor	Damon Dash
Creditor	Internal Revenue Service
Filing Date	5/22/06
Filing #	Not Listed
Amount	$7,897
Type	Federal Tax Lien
Disposition	Not Listed
County	New York, NY

Debtor	Damon Dash
Creditor	Employment Development Department
Filing Date	5/12/06
Filing #	067069977415
Amount	Not Listed

Type	Termination
Disposition	Unlapsed
County	CA

Debtor	Damon Dash
Creditor	Ian J. Hirsch
Filing Date	6/29/04
Filing #	DC-013949-2004
Amount	$3,768.02
Type	Civil Suit
Disposition	Not Listed
County	Bergen, NJ

Debtor	Damon Dash
Creditor	Criminal Court City of New York
Filing Date	6/27/96
Filing #	000950688
Amount	$155
Type	Civil New Filing
Disposition	Not Listed
County	New York, NY

Debtor	Damon Dash
Creditor	New York State Department of Taxation and Finance
Filing Date	11/16/95
Filing #	E006701377
Amount	$81.13
Type	State Tax Warrant
Disposition	Released 5/1/97
County	New York, NY

Debtor	Damon Dash
Creditor	State of New York
Filing Date	11/9/95
Filing #	000812834
Amount	$81

Type	State Tax Warrant Release
Disposition	Released 5/1/97
County	New York, NY

Debtor	Damon Dash
Creditor	State of New York
Filing Date	2/13/95
Filing #	000738298
Amount	$133
Type	State Tax Warrant Release
Disposition	Released 4/2/97
County	New York, NY

Debtor	Damon A. Dash
Creditor	Nassau Department of Social Services
Filing Date	5/17/94
Filing #	Not Listed
Amount	$6,450
Type	Not Listed
Disposition	Not Listed
County	New York, NY

Debtor	Damon A. Dash
Creditor	Nassau Family Court
Filing Date	5/2/94
Filing #	Not Listed
Amount	$3,410
Type	Not Listed
Disposition	Not Listed
County	New York, NY

Debtor	Damon Dash
Creditor	State of New York
Filing Date	12/31/93

Filing #	000617203
Amount	$52
Type	State Tax Warrant Release
Disposition	Released 5/1/97
County	New York, NY

Debtor	Damon Dash
Creditor	Not Listed
Filing Date	11/10/93
Filing #	00000006126
Amount	$11,167
Type	Federal Tax Lien
Disposition	Released
County	New York, NY

Debtor	Damon Dash
Creditor	State of New York
Filing Date	6/30/93
Filing #	000565596
Amount	$2,840
Type	State Tax Warrant Release
Disposition	Released 5/1/97
County	New York, NY

UNIFORM COMMERCIAL CODES (UCC)

Our databases along with available public records were searched for any Uniform Commercial Code filings which were recorded in the relevant jurisdictions for which our subject has resided. This search returned the following results:

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWYNA W. BROOKS D/B/A
EW BROOKS BROOKS LLC

Plaintiff,

-against-

DAMON ANTHONY DASH and
POPPINGTON LLC d/b/a DAMON
DASH STUDIOS

Defendants.

Case 1:19-cv-01944-JSR

DECLARATION

I, Damon Dash, declare the following under penalty of perjury:

1. As this court has been informed, after being made aware of the request to take my deposition, I asked my attorney to try and appear for a deposition here in California or by remote means as there are two NY warrants that were issued against me in connection with two separate judgment creditors which is presently being addressed in an interpleader action pending in the Supreme Court of the State of New York, NY County ("Case").

2. The proposed resolution to the Case, which was negotiated in the last week or so is costing me in excess of seven figures, which has put enormous financial strain on me at this juncture.

3. In any case, I am domiciled in California and so is co-defendant Poppington LLC. I have resided here for more than two years (prior to that I lived in North Carolina for two years). Everything that is relevant to this case is in California or North Carolina.

4. While the facts and law of every case is different, all of the litigation that I have been involved in the state of NY (whether I was the Plaintiff/Defendant or third party) over the last couple of years have not resulted in any physical appearance by me in the state of New York as this was not possible for me to do for the above-mentioned reasons that I've been fighting years to resolve. This includes past cases filed in this very court. This is the main reason why I asked the court to transfer this case to a more convenient forum for all parties.

5. In short, I am aware of my obligations to comply with discovery but at this moment in time, my working capital and source of income is essentially gone so it would cause great financial strain to fly to a place like Boston to be deposed in person given the amount of

money that I was relying upon now being used to settle the Case. I remain available to be deposed here in California or by remote means (while I remain in California).

6. For the foregoing reasons, I respectfully ask this court to deny the Plaintiff's application for sanctions.

I declare under penalty of perjury under the laws of the United States of America and California that the foregoing is true and correct.

Date: June 26, 2019
Los Angeles, California

Damon Dash

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-- -x

EDWYNA W. BROOKS d/b/a EW BROOKS LLC,

Plaintiff,

- against -

DAMON ANTHONY DASH and POPPINGTON DASH
LLC d/b/a DAMON DASH STUDIOS,

Defendants.

-- -x

Action No.: 19-1944-JS

DECLARATION OF DAMON

I declare under penalty of perjury under the laws of the United States of America and California that the foregoing is true and correct.

1. I submit this Declaration attesting to the present financial hardship that I am facing which is why I have not been able to pay the deposition transcript costs.

2. As suggested in the joint letter, I not have a salary or income, but depend solely on my business to provide me with some personal income. This personal income is virtually non-existent in recent times except for some one-off television projects and one substantial monetary settlement with Lee Daniels, the Academy Award nominated director.

3. In sum, virtually all of the revenues my business (Poppington LLC) generates is being utilized by this business to sustain itself, pay its employees and overhead and, hopefully break even (profit wise) over time.

4. Due to the confidential and personal nature of certain documents, I am sending copies of garnishment notices, restraining notices, expenses, etc. separately for the Court to consider as directed.

5. More specifically, in roughly the last six months (which is when the remote deposition took place), I received no salary or distributions from my business and was primarily depending on the quarterly settlement payments I was supposed to receive from a lawsuit that I settled with Lee Daniels ("Settlement") to pay all of my personal and business expenses.

6. These expenses and obligations are substantial and, importantly, at the time the planned deposition was to go forward in Boston (two months ago), the monies owed to individuals, vendors, landlord, etc. was roughly $100,000. An itemized list of these expenses is being submitted separately.

7. The Court will note that additional expenses were incurred due to the pregnancy of his fiancé, Raquel Horn.

8. In short, this roughly $100,000 of expenses has since ballooned by tens of thousands of dollars as I did not receive the $105,000 he was expecting to receive from the Settlement in April and July 2019 due to the money being tied up by restraining notices and motions in an interpleader action filed by his creditors. Copies of the Lee Daniels settlement and related restraining notices are being submitted separately. Again, my attorneys in the interpleader are working to resolve the dispute, but as a result of that interpleader action, the creditors seek to take all of these settlement payments for the next two years or so and redirect them to the themselves, all of which has put me in an extremely dire financial situation right now.

9. In short, my income streams have all been garnished or restrained presently and it is very difficult to address the mounting bills until I receive some relief from the Courts in which the various cases referred to are resolved. Thus, I would love to comply with the Court Order directing me to pay the transcript costs, but cannot presently pay these costs; when funds are

directing me to pay the transcript costs, but cannot presently pay these costs; when funds are available (which may be as soon as January 2020) when these cases are resolved, this cost can and will be paid to Plaintiff's counsel as ordered.

For the foregoing reasons, I respectfully ask this Court to deny any extra sanction requests and excuse me from having to comply with the Court's order until such time as the transcript costs can be paid.

Date: October 30, 2019
Los Angeles, California

Damon Anthony Dash

EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWYNA W. BROOKS d/b/a EW BROOKS BOOKS LLC,

Plaintiff,

-v-

DAMON ANTHONY DASH and POPPINGTON LLC d/b/a DAME DASH STUDIOS,

Defendants.

19-cv-1944 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.

On January 30, 2020, counsel for plaintiff Edwyna Brooks, via e-mail, requested the Court to hold defendants Damon Dash and Poppington LLC in contempt of court and to impose sanctions in the amount of $10,000 for their violations of the stipulation and order for a preliminary injunction effective March 19, 2019.

Under the terms of the injunction, Dash agreed not to "market, advertise, promote, distribute, sell the film Mafietta during the pendency of this litigation." ECF No. 23. And, at the close of bench trial on January 23, 2020, the Court reminded the parties that the injunction would be in effect until the Court issues its findings of fact and conclusions of law later this year. Despite this clear directive, defendants have, by their own admission, failed to comply with the terms of the injunction by not removing three Instagram posts - each dated March 5, 2017, March 8, 2017, and March 11, 2017 - promoting the film on

Poppington LLC's account. However, defendants contend this was accidental.

Without ruling whether the violation was intentional or accidental, the Court hereby orders defendants to remove the said posts by no later than January 31, 2020 at 5:00 p.m. While no sanctions will be imposed for the aforementioned violation, failure to comply with this Order, as well as any further knowing or reckless violation of the terms of the preliminary injunction, will be deemed contempt of court and sanctions will be imposed.

SO ORDERED.

Dated: New York, NY
January 30, 2019
6:45 p.m. (via email)

JED S. RAKOFF, U.S.D.J.

EXHIBIT F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWYNA W. BROOKS d/b/a EW BROOKS BOOKS LLC, Plaintiff, -v- DAMON ANTHONY DASH and POPPINGTON LLC d/b/a DAME DASH STUDIOS, Defendants.	19-cv-1944 (JSR) FINDINGS OF FACT AND CONCLUSIONS OF LAW

JED S. RAKOFF, U.S.D.J.

This copyright and trademark infringement case concerns the film "Mafietta," which is adapted from a book series of the same name. Plaintiff Edwyna Brooks is the author of the Mafietta book series, and defendant Damon Dash is a movie and music producer and the Chief Executive Officer of the co-defendant Poppington LLC, d/b/a Dame Dash Studios. In July 2015, Brooks and Dash started working on producing together a film version of Mafietta, but during the course of 2015 and 2016, their collaborative relationship fell apart. In 2017, defendants started marketing and selling the film on iTunes and on Dame Dash Studios' website, all without Brooks' consent.

On February 28, 2019, Brooks brought the instant action against defendants, claiming: (1) copyright infringement in violation of the Copyright Act ("Count One"); (2) trademark infringement in violation of the Lanham Act ("Count Two"); and

(3) common law trademark infringement ("Count Three"). See Pl. Ex. 1.[1] On March 19, 2019, the parties entered into a stipulated preliminary injunction, whereby defendants agreed not to market, advertise, promote, distribute, sell, or utilize the film in any fashion during the pendency of this litigation. On September 30, 2019, the Court granted summary judgment in favor of Brooks with respect to her trademark claims, but denied her motion with respect to the copyright claim as the Court found genuine disputes of material facts regarding that claim. See Memorandum Order dated 9/30/2019.

A bench trial of the copyright claim, as well as to determine damages for all three claims, commenced on January 21, 2020 and lasted for three days. The Court received 19 exhibits[2] and heard testimony from five witnesses: Brooks, Dash, Edwin Rush (attorney for Brooks in negotiating an unexecuted contract regarding the film), Eric Howard (attorney for Dash in

[1] "Def. Ex." refers to defendants' trial exhibits; "Pl. Ex." refers to plaintiff's trial exhibits; "Tr." refers to the trial transcript; and "JCO" refers to the stipulated facts in the parties' joint pre-trial consent order.

[2] During trial, defendants moved to admit Def. Ex. 15, a short video clip attached to Def. Ex. 14, an email from Brooks to Dash on May 9, 2016. See Tr. 1/23/2020, at 81:4-82:9. Brooks timely raised an objection based on relevancy, but the Court could not rule on the objection during trial as there were technological issues with playing the video. Id. After reviewing the video, the Court overrules the objection and admits Def. Ex. 15 into evidence.

negotiating the same unexecuted contract), and Alvin Williams (damages expert for Brooks). On March 30, 2020, the parties submitted post-trial memoranda in lieu of oral summations.

Having now carefully reviewed all of the materials, the Court hereby grants judgment in favor of Brooks on her copyright infringement claim, issues a permanent injunction against defendants, and awards Brooks $300,000.00 in total damages, based on the findings of fact and conclusions of law set forth below. The Court's findings of fact are based on its assessment of the evidence received at trial, including its assessment of the credibility of the witnesses (based on their demeanor at trial, the consistency and internal logic of their accounts, and other pertinent factors). In particular, the Court finds generally credible the testimony of Brooks. In contrast, even disregarding the fact that Dash was throughout the trial disruptive and apparently incapable of exercising ordinary civility, the Court finds Dash's testimony to be unworthy of belief.[3] To the extent there are conflicts between the testimony

[3] To mention just a few of the many instances of Dash's disruptive behaviors, Dash repeatedly disrupted the trial testimony of Edwin Rush, shouting out answers to questions directed at the witness, loudly accusing the witness of "lying," and repeatedly making gestures and uttering unpleasant noises. Tr. 1/21/2020, at 51:21-52:5, 52:17-53:3. And by way of example of Dash's gross incivility, during cross-examination, Dash characterized plaintiff's attorney's breath as "doo-doo." Tr. 1/23/2020, at 49:23-50:2. (Dash had engaged in similar obscene

of Brooks and the testimony of other witnesses, the Court credits the former unless otherwise noted.

Background

Brooks, d/b/a EW Brooks LLC, is the author of a four-part book series titled Mafietta, which is based on an aspiring female crime boss. JCO 8-9; Tr. 1/22/2020, at 71:1-5, 19-20. Her goal when writing the book series was to turn them into a film or a television series. JCO 8-9. Dash is the Chief Executive Officer of Poppington LLC, a New York limited liability company, and ran a "Poppington seminar" designed to help and mentor independent, aspiring entrepreneurs. JCO 9; Tr. 1/22/2020, at 156:10-157:5.

In mid-July 2015, Brooks paid $50.00 to attend a Poppington seminar held in Albemarle, North Carolina. Tr. 1/22/2020, at

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attacks on plaintiff's counsel during Dash's deposition. See, e.g., id. at 50:14-24 (quoting from deposition).

Substantively, Dash was repeatedly evasive and/or inconsistent. For example, he initially stated that he "always" entered into a 50/50 ownership arrangement at the outset with aspiring movie producers like Brooks, see Tr. 1/22/2020, at 156:15-17, 161:17-21, but when the Court inquired further, he admitted that the instant project with Brooks was the "first time" that he worked on such a project involving a movie, see id. at 163:21-164:8. In addition, he made hyperbolic statements such as that the Mafietta film did not reflect the script Brooks prepared "at all" and that he "had to improvise and make up the whole thing," which the Court finds extremely unlikely given that the actors did table reads based on, and the script editors worked off of, the script and rewrites that Brooks prepared. Tr. 1/22/2020, at 169:5-25; see also Tr. 1/23/2020, at 70:10-71:2.

71:21-72:1; JCO 9-10. Brooks and Dash discussed the book series Mafietta, and Brooks relayed to Dash that she had the necessary funding to shoot a movie version of Mafietta and that she needed "mentorship and a co-sign" to pursue the movie production. JOC 7; Tr. 1/22/2020, at 72:2-19. Dash agreed to provide directorial services. JOC 7; Tr. 1/22/2020, at 158:20-159, 168:21-23.

The filming began on August 3, 2015 and was completed by August 6, 2015. JCO 10; Tr. 1/22/2020, at 75:23-76:1. Prior to shooting the film, Dash, Brooks, and other actors of the film did a table read of the script that Brooks prepared and gave to Dash. Tr. 1/22/2020, at 72:20-73:3, 120:8-23. Brooks and Alicia Allen, who had been helping Brooks with adapting the book series to a film, issued rewrites of the script on the second day of the filming, and issued the final version of the script reflecting further rewrites on the last day of the filming. Pl. Ex. 19; Tr. 1/22/2020, at 74:22-75:2, 77:20-78:23, 120:24-121:9, 149:20-24. Brooks paid for the entire production cost of $49,372.34. Pl. Exs. 12, 25; Tr. 1/22/2020, at 103:23-104:4, 105:21-106:5. In exchange for 50% of net profits of the film, Dash provided his Dragon Red camera, performed the directorial services, brought in certain celebrities as key cast members – including Chandra Davis a/k/a Deelishis and Jonathan Ancrum a/k/a Murda Mook – and promoted the film afterwards. Id.; Tr.

1/22/2020, at 79:6-10, 84:22-85:6, 85:12-21, 113:18-25, 118:11-13, 119:18-23, 132:15-20; Tr. 1/23/2020, at 4:1-6, 16-20.

On July 31, 2015, before the production began, Rush, counsel for Brooks, sent an email to Dash with a draft of the Mafietta Motion Picture Director's Agreement laying out the terms of Brooks and Dash's collaboration. Tr. 1/21/2020, at 8:1-2; JCO 8; Pl. Ex. 20. After finishing the shooting, the parties continued with their postproduction work, Tr. 1/22/2020, 79:24-80:3, but their collaborative relationship fell apart as Brooks and Dash could not agree on various aspects of the production. See, e.g., Pl. Ex. 27; Tr. 1/22/2020, at 80:6-90:18. Eventually, on November 11, 2015, Rush, on behalf of Brooks, sent a draft termination and release letter to Dash for his signature, and Brooks sent an email to Craig Thieman, a film editor, directing him to cease and desist all further contact with Dash regarding the film. Pl. Ex. 5; Tr. 1/21/2020, at 23:11-14; Tr. 1/22/2020, at 88:15-90:13, 166:16-22.

In an apparent attempt to salvage the situation, the parties' respective lawyers, Rush and Howard, resumed negotiating the Mafietta Motion Picture Director's Agreement beginning on January 13, 2015. Pl. Ex. 26; Tr. 1/22/2020, at 90:14-17. On April 8, 2016, Rush sent to Howard an updated draft of the agreement incorporating various terms they had negotiated between January 13, 2015 and April 8, 2016. Pl. Ex. 26; Tr.

1/21/2020, at 16:19-23. After still further negotiations, Rush, on October 4, 2016, sent Howard a further updated draft of the agreement. Pl. Ex. 25. All three versions of the agreement contained identical work-for-hire and postproduction provisions (discussed in more detail below). Pl. Exs. 20, 25, 26. Dash, however, signed none of these three versions, and in the end there was no signed agreement between Brooks and Dash.[4] Tr. 1/21/2020, at 8:14-16, 11:14-15; 14:3-14, 24:10-15.

Nonetheless in February and March of 2017, the defendants put numerous posts on the Instagram page of Dame Dash Studios promoting the film. Pl. Ex. 11; Tr. 1/22/2020, at 92:5-97:13. Also, in 2017, the defendants, without Brooks' consent, placed the 17-minute version of the film on the subscription-based platform of Dame Dash Studios[5] and on iTunes. JCO 11; Tr. 1/22/2020, at 91:25-92:11, 97:15-17. Upon discovering this, Brooks, on December 29, 2017, reached out to iTunes, which took down the film from its platform in late January 2018. Id.; Pl.

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[4] Previously, the Court determined that, under applicable New York or North Carolina statute of frauds, there was no enforceable oral contract pursuant to which Dash had a co-ownership interest in net profits of the film, while clarifying that co-ownership in net profits of the film and co-authorship in the film are distinct concepts, where the former is an indicium of the latter. See Memorandum Order dated 9/30/2019, at 11-16.

[5] Dame Dash Studio offers subscription options of either $9.99/month or $49.99/year. Pl. Ex. 6.

Ex. 1, Ex. E; see also Tr. 1/22/2020, at 97:19-100:22. On January 27, 2019, Brooks registered the film with the U.S. Copyright Office with the Registration No. Pau 003956394, and brought the instant action against defendants on February 28, 2019. Pl. Exs. 1, 14; JCO 11; Tr. 1/22/2020, at 107:10-20, 143:7-17.

Claim for Copyright Infringement

In order to establish copyright infringement, plaintiff must show "(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361 (1991).[6] There is no dispute that Brooks owns a valid copyright over the film Mafietta: in January 2019, Brooks registered the film with the U.S. Copyright Office. Pl. Ex. 14; see also Fonar Corp. v. Domenick, 105 F.3d 99, 104 (2d Cir. 1997) ("A certificate of copyright registration is prima facie evidence that the copyright is valid."). Furthermore, there is no dispute that defendants "copied" – defined to include reproduction and distribution – the film Mafietta. See Arista Records LLC v. Doe, 604 F.3d 110, 117 (2d Cir. 2010).

[6] Unless otherwise indicated, in quoting cases all internal quotation marks, alterations, emphases, footnotes, and citations are omitted.

Defendants' defense is that Dash co-owned the copyright in the film Mafietta, in which case Dash cannot be held liable. In the Second Circuit, when there is no written contract to address co-authorship (as is the case here), two or more contributors to a work are considered "joint authors" if each "(1) made independently copyrightable contributions to the work; and (2) fully intended to be co-authors." Thomson v. Larson, 147 F.3d 195, 200 (2d Cir. 1998). In its summary judgment order, the Court already determined that Dash has made independently copyrightable contributions to the film Mafietta. See Memorandum Order dated 9/30/2019, at 10. Therefore, the only issue at trial with respect to the liability portion of Count One was whether Brooks and Dash fully intended to be co-authors.

The Second Circuit has declined to define explicitly what kinds of proof are necessary to show such joint intent, because the test of co-authorship depends on specific factual circumstances. Nevertheless, a "specific finding of mutual intent [is] necessary," and, to assess this determination, courts have typically considered such factors, inter alia, as whether the parties intended to be credited or billed as co-authors, the parties' view of decision-making and creative control, and the right to enter into third party contracts. Thomson v. Larson, 147 F.3d 195, 202-04 (2d Cir. 1998).

Here, the Court finds that Brooks and Dash did not ever intend to be co-authors. To begin with, the Court credits the testimony of Brooks and Rush that Dash was employed under the doctrine of work for hire and that it was never intended that he be a co-author of the film. See generally Tr. 1/21/2020 at 9:18-23:20; Tr. 1/22/2020, at 79:6-152:19. Documentary evidence introduced at trial corroborates this assertion. For instance, although the Mafietta Motion Picture Director's Agreement was never executed, all three drafts – dated July 30, 2015, April 8, 2016, and October 4, 2016, respectively – contained the following identical work-for-hire provision:

> Director's [(i.e., Dash's)] performance hereunder, including all suggestions, ideas, or screen business contributed to the screenplay or to the Film as made will be as an employee for hire, with the resulting film to be deemed a work made for hire as defined in the United States Copyright Act, and Producer [(i.e., Brooks)], or its designee, will be deemed the sole author thereof. Moreover, Director waives any so-called author's rights or droit moral that may accrue under any law throughout the world based on or deriving from his contributions to the Film.

Pl. Exs. 20, 26, 25. All three versions also contained the following identical postproduction clause:

> Director will have the right to consult with Producer during postproduction of the motion picture, and Director will be available for consultation, but Producer will have the right to make all final decisions with respect to editing and postproduction work, release, and exploitation of the motion picture.

The fact that Dash and his counsel never objected to these provisions from July 30, 2015 through at least October 4, 2016 – while other provisions regarding reimbursement, merchandise, additional filming, additional investment, producer's credit, and more were actively revised during the negotiation process – strongly supports the finding that the parties did not intend Dash to be a co-author of the film. See Pl. Exs. 26, 25; Tr. 1/21/2020, at 12:16-13:2, 23:17-20; Tr. 1/22/2020, at 184:20-25, 187:24-189:19, 200:13-15, 201:16-18, 202:9-14.

Furthermore, in an email to Dash on September 22, 2015, Brooks wrote:

> I need to know that the 'Mafietta' brand is in tact [sic] as it was when I brought it to you. This is about women's empowerment at the end of the day. . . . I can't have you take it so far left or right that I don't recognize it. For that reason, I am not offering creative control. I am offering a chance for you to bring an edit to the table . . . I will maintain final approval.
>
> I have no issue with paying out the 50% we discussed. However, I have a big issue with the word OWN as the book, sizzle, and script were complete when I met you.

Pl. Ex. 27. This email shows Brooks' clear intent to deny sharing any creative control with Dash. See also Tr. 1/22/2020, at 79:14-16.

In contrast, although Dash and Howard testified that the parties intended Dash to be a co-author,[7] their self-serving testimony not only lacked credibility but also was not corroborated by a single piece of documentary evidence. See generally Tr. 1/22/2020, at 160:15-164:9, 167:11-25, 180:23-190:9; Tr. 1/23/2020, at 16:12-14. Rather, they could only point to documentary evidence showing that Brooks and Dash intended the profits to be split 50/50 (which is not contested), rather than that Brooks and Dash intended to co-own the copyright. Tr. 1/22/2020, at 185:23-186:9; Tr. 1/23/2020, at 23:1-8; Pl. Ex. 26; see also Tr. 1/21/2020, at 17:5-17. In fact, Dash admitted at one point that the word "copyright" "never came up" between him and Brooks, and he did not seem to demonstrate any understanding of the difference between ownership interest in profits and ownership interest in copyright. Tr. 1/23/2020, at 23:6-8, 29:21-30:2, 33:18-23.

[7] After the close of evidence, Brooks made a Fed. R. Civ. P. 50 motion for judgment as a matter of law, arguing that a reasonable jury would not have a legally sufficient evidentiary basis to find for Dash on whether the parties intended Dash to be a co-author of the film. Tr. 1/23/2020, at 86:20-88:19. As this was bench trial, the motion should have been made pursuant to Fed. R. Civ. P. 52, rather than Fed. R. Civ. P. 50. Even assuming Brooks made the motion properly under Fed. R. Civ. P. 52, the Court hereby denies the motion, as this testimony by Dash and Howard provided some evidentiary basis – although the Court, as a fact finder, eventually found their testimony not credible – that the parties intended Dash to be a co-author.

For the foregoing reasons, the Court finds that the parties did not mutually intend Dash to be a co-author of the film and therefore Dash did not co-own the copyright in the film. The Court further finds that Brooks was the dominant author between the two.[8] See 16 Casa Duse, LLC v. Merkin, No. 12-cv-3492 (RJS), 2013 WL 5510770, at *9 (S.D.N.Y. Sept. 27, 2013), aff'd in part, rev'd in part on other grounds, 791 F.3d 247 (2d Cir. 2015) ("When the Second Circuit finds that there is no mutual intent to be co-authors, it holds that whoever was the 'dominant' author is the sole author."). Accordingly, the Court concludes that defendants infringed Brooks' copyright by reproducing and distributing the film on iTunes and Dame Dash Studios without her permission.

Remedies and Damages

[8] As discussed above, Brooks was the author of the book series that was turned into the film, paid for the entire production and post-production, paid the actors, provided the scripts and re-writes, and so forth. Pl. Exs 12, 19, 25; Tr. 1/22/2020, at 71:1-5, 19-20, 74:22-75:2, 77:20-78:23, 103:23-104:4, 105:21-106:5, 120:24-121:9, 149:20-24; JCO 8-9. Furthermore, the documentary evidence discussed above also strongly supports finding Brooks to be the dominant author. Tellingly, Dash did not even recognize almost all of the crew who were working on shooting the film. Tr. 1/23/2020, at 59:24-60:22. In addition, as discussed above, the Court entirely discredits Dash's hyperbolic statements that the film did not reflect the script Brooks prepared "at all" and that he "had to improvise and make up the whole thing." Tr. 1/22/2020, at 169:5-25; see also Tr. 1/23/2020, at 70:10-71:2.

Given that defendants are liable to Brooks on the claims for copyright infringement and trademark infringement, the Court hereby issues a permanent injunction enjoining defendants, and each of them, from marketing, advertising, promoting, distributing, selling, or copying the film Mafietta without Brooks' consent. See 17 U.S.C. § 502(a); 15 U.S.C. § 1116(a).

In addition to injunctive relief, Brooks seeks the following monetary damages: (1) $557,372.84 for copyright infringement (consisting of $49,372.84 for the cost of producing the film, $8,000.00 for the cost of marketing, and $500,000.00 for future income loss), (2) $557,372.84 for trademark infringement (consisting of the same), (3) $375,500.00 in discretionary damages relating to infringement, (4) costs and attorney's fees, and (5) treble damages.[9] The Court concludes, however, that only damages in the total amount of $300,000.00 are warranted, for the following reasons.

Damages Under Count One. Under the Copyright Act, Brooks may elect to seek either actual damages and profits or statutory damages, and Brooks elected the former at the end of the trial. 17 U.S.C. § 504(c)(1); Tr. 1/23/2020, at 86:16-19. The relevant

[9] In contrast, in the joint pre-trial consent order, she sought, without distinguishing damages under the copyright claim from those under the trademark claims: (1) $49,372.84 for the cost of producing the film, (2) $500,000.00 for future income loss, (3) attorney's fees, and (4) treble damages.

statutory provision states: "The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. . . ." 17 U.S.C. § 504(b). Here, as noted, Brooks seeks recovery based on actual damages (including loss of future income) suffered by her, rather than defendants' profits.[10]

In assessing actual damages she suffered, the Court makes the following findings of fact. In 2016, Brooks submitted the film to an international film festival held in Nashville, TN, where the film won an award. Tr. 1/22/2020, at 104:9-11, 146:15-19. However, once defendants placed the film on Dame Dash Studios and iTunes in 2017, which constituted a commercial release, the film no longer became eligible for submissions to many other film festivals, effectively eliminating any chance of further marketing of the film through festivals. Id.; id. at 147:4-12; Tr. 1/21/2020, at 38:12-39:3, 46:4-16. Also, placement of the film on commercial platforms, as well as the dispute over

[10] Except for defendants' advertisement revenue figures from the first quarter of 2017 to May 2019 associated with the Mafietta trailer placed on YouTube, no evidence was presented during trial regarding how much profit defendants made from streaming the film on iTunes or Dame Dash Studios, other than Dash's self-serving testimony that there was no revenue from iTunes or Dame Dash Studios associated with the film. Tr. 1/23/2020, at 20:19-22:25, 25:23-26:12, 51:17; Def. Ex. 32.

the chain of title, largely erased the possibility that the film would be acquired by a media platform. Id.; id. at 39:4-19; Tr. 1/22/2020, at 104:1-9, 138:5-11, 139:2-8; Pl. Ex. 16.

The Court finds that Brooks thereby lost approximately $300,000.00 in potential future income as a result of defendants' infringing conduct. According to the expert testimony by Williams,[11] the 17-minute film could have been transformed into a TV series or a back-door pilot. Pl. Ex. 16; see generally Tr. 1/21/2020, at 34:11-62:16. Mafietta could well have been acquired as such by cable networks or streamlining video on-demand services ("SVODs"), given that there have been high demands for organized crime TV series and series produced by, written by, and starring people of color. Id. Furthermore, the cast for the film involved an identifiable female talent with a solid fan base – with over two million followers on her Instagram account – and a male lead with a strong underground hip hop fan base. Id. If the 17-minute film had been acquired as

[11] During trial, defendants objected to the admissibility of Williams as an expert witness, on the ground that Williams was allegedly not an expert in film and sale acquisition. See Tr. 1/21/2020, at 32:22-33:19. The Court reserved its decision. See id. After examining all relevant evidence - including Williams' resume and his testimony, all of which show his expertise and experience in acquisition of films for distribution as well as licensing films for various media platforms - the Court hereby overrules the objection to the admissibility of Williams as an expert witness. See, e.g., Pl. Ex. 16; Tr. 1/21/2020, at 31:2-32:5, 41:3-42:9. It also finds his testimony credible.

such by cable networks, each episode would have had a production budget from $50,000.00 to $250,000.00 per episode, and possibly higher if acquired by premium pay channels or SVODs, id., thus implicitly reflecting the potential profitability of the series.[12]

For damages calculation, Williams assumed that ten episodes would be produced based on the 17-minute version of the film, but he provided no explanation as to how he arrived at the ten episode figure. Pl. Ex. 16; Tr. 1/21/2020, at 58:12-15; see also id. at 39:20-40:3. However, he testified that typically networks would make a minimum of six episodes, because they need at least six episodes to qualify for an Emmy Award. Tr. 1/21/2020 at 37:17-23. Therefore, the Court finds that conservatively six episodes would have come out of this film, and thus finds that Brooks lost about $300,000.00 in future income.

While Brooks is therefore entitled to $300,000.00 in actual damages for lost income, she is not entitled to damages for the costs of producing and marketing the film in the amount of, respectively, $49,372.84 and $8,000.00,[13] because she would have

[12] Any cost associated with marketing the show or back-door pilot – conservatively, at least $200,000.00 according to Williams' testimony, Tr. 1/21/2020, at 50:22-51:12 – would be borne by the network, rather than by Brooks. Id. at 60:20-61:11.

[13] In her post-trial closing memorandum, Brooks asserts for the first time that she is entitled to $8,000.00 in relation to

spent those amounts regardless of whether defendants subsequently infringed her copyright. Moreover, Brooks has not put forth any reason why treble damages are warranted, nor does the Court find a reason to award treble damages. While Dash may be a difficult and intemperate person, and one lacking in credibility, there is no evidence that he entered into this arrangement for the purpose of committing a blatant fraud. Lastly, under the relevant statutory provisions, Brooks is not entitled to attorneys' fees, because the infringement at issue started before the registration of her copyright.[14] 17 U.S.C. §

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marketing the film after it was produced, based on her testimony during trial. See Plaintiff's Post-Trial Memorandum, ECF No. 64, at 12; Tr. 1/22/2020, at 126:17-23.

[14] After the close of evidence, defendants made a motion for judgment on the merits regarding damages under Count One, arguing that there was no evidence that Brooks' copyright was infringed after it was registered in January 21, 2019. Tr. 1/23/2020, at 89:18-90:9. The motion is granted with respect to the issue of whether Brooks is entitled to attorney's fees as discussed above, but denied in all respects. Although registration of a work with the Copyright Office is a precondition to filing a suit for infringement under the Copyright Act, see 17 U.S.C. § 411(a), such registration "is not a condition of copyright protection." 17 U.S.C. § 408(a); see also Well-Made Toy Mfg. Corp. v. Goffa Int'l Corp., 210 F. Supp. 2d 147, 157 (E.D.N.Y. 2002), aff'd sub nom., 354 F.3d 112 (2d Cir. 2003). However, plaintiff may not recover statutory damages and attorneys' fees for infringement that occurred before registration. See 17 U.S.C. § 412; Argentto Sys., Inc. v. Subin Assocs., LLP, No. 10-cv-8174 (RWS), 2011 WL 2534896, at *2 (S.D.N.Y. June 24, 2011). Therefore, Brooks is not entitled to attorneys' fees related to the copyright infringement claim, but she properly seeks actual damages for pre-registration infringement. See also Renna v. Queens Ledger/Greenpoint Star

412; see also Ez-Tixz, Inc. v. Hit-Tix, Inc., 919 F. Supp. 728, 735-36 (S.D.N.Y. 1996).

Damages Under Counts Two (and Three[15]). Under the Lanham Act, Brooks is entitled to recover "(1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action." 15 U.S.C. § 1117(a). As discussed above, Brooks seeks actual damages she suffered, rather than defendants' profits. To the extent these are based on her lost future income that would have resulted from turning the film into a TV series, the damages sought under Counts Two and Three are duplicative of the damages awarded under Count One. Otherwise, Brooks puts forth no evidence that her Mafietta mark and brand were harmed or tarnished by defendants' infringing activities (e.g., evidence showing a decrease in her book sale revenue). Furthermore, she is not entitled to additional $375,000.00 in discretionary damages, as the Court does not find that the amount of the recovery in the amount of $300,000.00 is inadequate. See 15 U.S.C. § 1117(a).

Inc., No. 17-cv-3378 (DRH) (SIL), 2019 WL 1061259, at *4 (E.D.N.Y. Feb. 13, 2019), report and recommendation adopted, 2019 WL 1062490 (E.D.N.Y. Mar. 6, 2019).

[15] During trial, plaintiff conceded that the claim for common law trademark infringement (Count Three) should, for damage calculation purposes, be dismissed as being duplicative of the claim for trademark infringement in violation of the Lanham Act (Count Two). See Tr. 1/21/2020, at 63:11-64:10.

Lastly, this is not an "exceptional case" warranting an award of attorney's fees under the claims for trademark infringement. Under the Lanham Act, the Court may award, in "exceptional cases," reasonable attorney fees to the prevailing party. 15 U.S.C. § 1117(a). Based on the totality of circumstances, the Court does not find "there is an unusual discrepancy in the merits of the positions taken by the parties" with respect to the claims for trademark infringement, as exemplified by the arguably colorable, albeit ultimately defeated, argument raised by defendants during this action that Brooks had acquiesced to defendants' use of the trademark at issue. Georgia-Pacific Consumer Products v. Von Drehle, 781 F.3d 710 (4th Cir. 2015); see also Octane Fitness, LLC v. ICON Health & Fitness, Inc., 134 S. Ct. 1749 (2014). Nor did defendants "litigate[] the case in an unreasonable manner" with respect to the claims for trademark infringement. Id.

In sum, the Court concludes that no additional damages are warranted under the trademark claims on top of damages awarded under the copyright claim.

Conclusion

The Clerk is directed to enter final judgment in favor of plaintiff Edwyna Brooks, and against both defendants, jointly and severally, in the amount of $300,000.00, plus post-judgment interest at a rate of 0.22% per annum accruing from the date

hereof, see 28 U.S.C. § 1961, and to close the case. Furthermore, defendants are permanently enjoined from marketing, advertising, promoting, distributing, selling, or copying the film without Brooks' consent.

SO ORDERED.

Dated: New York, NY
April 13, 2020

JED S. RAKOFF, U.S.D.J.

EXHIBIT G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWYNA W. BROOKS d/b/a EW BROOKS BOOKS LLC,

Plaintiff,

-v-

DAMON ANTHONY DASH and POPPINGTON LLC d/b/a DAME DASH STUDIOS,

Defendants.

19-cv-1944(JSR)

MEMORANDUM ORDER

JED S. RAKOFF, U.S.D.J.

Familiarity with the background to this copyright and trademark infringement case is here assumed. As relevant here, the Court held a three-day bench trial starting on January 21, 2020, and issued its Findings of Fact and Conclusions of Law on April 13, 2020. See ECF No. 71. Accordingly, the Clerk of the Court, on April 15, 2020, entered final judgment in favor of plaintiff Edwyna Brooks, and against defendants Damon Dash and Poppington LLC, jointly and severally, in the amount of $300,000.00, plus post-judgment interest at a rate of 0.22% per annum accruing from April 15, 2020.[1] See ECF No. 72. Subsequently, on May 5, 2020, defendants filed a notice of appeal to the U.S. Court of Appeals for the Second Circuit. See ECF No. 75.

[1] In addition, defendants were permanently enjoined from marketing, advertising, promoting, distributing, selling, or copying the film "Mafietta" without Brooks' consent.

Now before the Court is a motion of defendants for a discretionary stay of enforcement and execution of the final judgment without a bond or other security pursuant to Fed. R. Civ. P. 62(b). See ECF No. 76. Alternatively, defendants ask that, if that request is denied, the Court grant a two-week extension of the 30-day automatic stay under Fed. R. Civ. P. 62(a), so that defendants can secure a supersedeas bond to move for a stay pursuant to Fed. R. Civ. P. 62(b).[2] See Declaration in Support, ECF No. 76-1 ("Defendants Mem."), at 1 n.1. Plaintiff opposes the main request but does not address the alternative request to obtain a two-week extension. See Memorandum of Law in Opposition to Notice to Stay Execution, ECF No. 77. For the reasons set forth below, the Court denies the request to stay enforcement without posting any bond, but grants a two-week extension of the automatic stay.

Under Fed. R. Civ. P. 62(a), "execution on a judgment and proceedings to enforce it are stayed for 30 days after its entry, unless the court orders otherwise." In addition, under Fed. R. Civ. P. 62(b), "a party may obtain a [further] stay by providing a bond or other security. The stay takes effect when

[2] As represented to the Court in their brief and during a joint telephonic conference held on May 13, 2020, defendants are currently endeavoring to secure a supersedeas bond in the amount of the judgment.

the court approves the bond or other security and remains in effect for the time specified in the bond or other security."

The purpose of Fed. R. Civ. P. 62(b) is to ensure "that the prevailing party will recover in full, if the decision should be affirmed, while protecting the other side against the risk that payment cannot be recouped if the decision should be reversed." Cleveland Hair Clinic, Inc. v. Puig, 104 F.3d 123, 125 (7th Cir. 1997).[3] However, the Court "may, in its discretion, waive the bond requirement if the appellant provides an acceptable alternative means of securing the judgment." In re Nassau County Strip Search Cases, 783 F.3d 414, 417 (2d Cir. 2015) (per curiam).

The Second Circuit adopted the following as non-exclusive factors for district courts to consider in determining whether to waive the supersedeas bond requirement:

> (1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would

[3] Unless otherwise indicated, in quoting cases all internal quotation marks, alterations, emphases, footnotes, and citations are omitted.

> place other creditors of the defendant in an insecure position.

Id. at 417-18.

Here, with the possible exception of the second factor, all factors strongly weigh in favor of denying the request.

With respect to the first, third, fourth, and fifth factors, defendants argue that they can easily satisfy the judgment because Poppington LLC's annual net income exceeds the amount of the judgment and because Poppington LLC allegedly does not have any known secured creditors. See Defendants Mem. 3. But this statement is flatly contradicted by the representations the defendants have repeatedly made to the Court in the past half year that defendants – both Dash and Poppington LLC - have not had, and do not have, the means to pay even the mere $2,410.75 owed to plaintiff's counsel in deposition costs as previously ordered by the Court. See ECF Nos. 49, 57, 73. For example, Dash, on October 30, 2019, submitted a declaration under penalty of perjury under the laws of the United States and California explaining why both he and Poppington LLC could not afford to pay the $2,410.75. See ECF No. 58. In light of these prior representations, and defendants' continued nonpayment of even the $2,410.75, the Court has no confidence in defendants' ability (or willingness) to pay the judgment and is confident

that the collection process for plaintiff will be challenging and complex if the judgment is affirmed on appeal.

In sum, virtually all the relevant factors strongly favor denying the request under Fed. R. Civ. P. 62(b) for a discretionary stay of enforcement and execution of the final judgment without a bond or other security. However, while the Court is likewise skeptical that defendants will be able to obtain a supersedeas bond in the amount of the judgment, nevertheless, since plaintiff has not argued for denial of this request, the Court grants an extension of the automatic stay under Fed. R. Civ. P. 62(a) until May 29, 2020. No further extension will be granted, however, for any reason, and, if defendants wish to make a Fed. R. Civ. P. 62(b) motion for bond approval, they must make such a motion sufficiently prior to May 29, 2020 so that the Court can rule on the motion before the expiration of the stay on May 29, 2020.

The Clerk of the Court is directed to close the entry bearing docket number 76.

SO ORDERED.

Dated: New York, NY
May 16, 2020

JED S. RAKOFF, U.S.D.J.

EXHIBIT H

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MONIQUE BUNN,

Plaintiff,

v.

DAMON ANTHONY DASH, et al.,

Defendants.

Case No. CV 20-7389-DMG (JCx)

ORDER RE PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT [119]

Before the Court is Plaintiff Monique Bunn's Motion for Partial Summary Judgment. [Doc. # 119 ("MSJ").] The MSJ is fully briefed. [Doc. ## 123 ("Opp."), 124 ("Reply").] For the following reasons, the Court **GRANTS in part** and **DENIES in part** Bunn's MSJ.

I.

PROCEDURAL BACKGROUND

Bunn initiated this action on December 26, 2019 in the Southern District of New York. [Doc. # 1.] She filed the operative First Amended Complaint ("FAC") on April 23, 2020 against Defendants Damon Dash, Damon Dash Studios ("DDS"), Poppington LLC, and Raquel Horn. [Doc. # 49.] The FAC alleges claims for sexual battery against Dash,

negligence against Poppington and DDS, and conversion and negligent infliction of emotional distress against all Defendants. The action was transferred to this Court on August 10, 2020. [Doc. # 68].

Bunn filed the instant MSJ on March 31, 2021, seeking summary judgment only on her conversion claim against all Defendants.

II.

FACTUAL BACKGROUND[1]

Bunn is a photographer in the entertainment industry and resides in Pennsylvania. Bunn Decl. ¶¶ 1-2 [Doc. # 121]. Dash and Horn together operate a production studio in Sherman Oaks, California through Poppington, their limited liability company. SUF 3, 10[2]; Dash Decl. ¶ 2 [Doc. # 123-3][3]; Horn Decl. ¶¶ 2-3 [Doc. # 123-4].[4]

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[1] The Court discusses only those facts relevant to the conversion claim, the only claim at issue in this motion. The facts are uncontroverted unless otherwise noted. The Court will address the parties' evidentiary objections as they arise in the discussion. To the extent any objected-to evidence is not discussed, the objections are **OVERRULED** as moot.

[2] The Court refers to the document containing Defendants' responses for Plaintiff's Statement of Undisputed Facts ("SUF"). [*See* Doc. # 123-1].

[3] Dash claims in his declaration that he is "neither a member nor the Chief Executive Officer of Poppington, LLC." Dash Decl. ¶ 3. In the immediately preceding paragraph, however, he says, "I have a separate, limited liability company" with the same address that he does not dispute belongs to Poppington. *Id.* ¶ 2. He also previously testified in a separate trial to owning Poppington, and is listed on Poppington's corporate filing with the California Secretary of State as its CEO. *See* Brown Decl. ¶ 2, Ex. 1 at 24; *id.* at ¶ 4, Ex. 3 [Doc. # 124-1]. "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007).

[4] Bunn does not define DDS's status in her moving papers, other than to refer to the studios as belonging to "Poppington/DDS." *See, e.g.*, SUF 10. In the FAC, she alleges that DDS is an alter ego of Dash and is not incorporated nor is it a limited liability company or limited liability partnership. FAC ¶ 5. In their Answer, Defendants deny the existence of DDS as an entity. Answer ¶ 6 [Doc. # 79]. Since the parties appear to agree that DDS is not an independent legal entity, summary judgment against it is **DENIED** and the Court *sua sponte* **DISMISSES** it from this action.

In April 2019, Dash and Horn invited Bunn to come to Los Angeles for a photography shoot and asked her to bring a collection of her past photographs. Bunn Decl. ¶ 3. Bunn arrived in Los Angeles on April 18, 2019. *Id.* ¶ 5. After briefly visiting Dash and Horn at their home,[5] Bunn went with them to the Poppington studio. *Id.* at ¶ 6. She brought with her a host of personal items, including two laptop computers, photography equipment, and CDs and hard drives that collectively contained over 100,000 photographs. *Id.* at ¶¶ 7, 16-17. After a few hours at the studio, the three returned to Dash's residence, where Bunn would be staying during her time in Los Angeles. *Id.* ¶ 8. Bunn left her belongings behind at the studio in a locked office space provided by Dash and Horn. *Id.*

The next day, according to Bunn, it was agreed that Bunn needed to purchase additional equipment to complete the photo shoot. *Id.* at ¶ 9. Dash and Horn gave her Poppington's credit card and had their driver take Bunn to the Apple store, where she purchased approximately $3,000 worth of equipment. *Id.* at ¶ 10. According to Bunn, Horn was unhappy with the cost of the purchase and became upset. *Id.* at ¶ 11. On the evening of April 20, 2019, Dash and Horn kicked her out of the house and sent her to a hotel. She asked them if she could return to the studio to retrieve her belongings, but they refused. *Id.* at ¶ 12. They assured her that they would send her belongings to her the following week. *Id.* at ¶ 13.

According to Dash, Bunn made unauthorized purchases on the Poppington card and then was caught trying to steal the purchased items, which is why Dash and Horn asked her to leave. Dash Decl. ¶ 7. Dash acknowledges that he told Bunn he would make arrangements to have her belongings returned to her. *Id.* at ¶ 8.

On April 29, 2019, Bunn texted Dash requesting that her belongings be returned, but he did not respond. Bunn Decl. ¶ 14, Ex. 1.

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[5] Bunn suggests, and Defendants do not dispute, that Dash and Horn live together and are romantic partners as well as business partners. *See* Bunn Decl. ¶¶ 4, 6.

III.

LEGAL STANDARD

Summary judgment should be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *accord Wash. Mut. Inc. v. United States*, 636 F.3d 1207, 1216 (9th Cir. 2011). Material facts are those that may affect the outcome of the case. *Nat'l Ass'n of Optometrists & Opticians v. Harris*, 682 F.3d 1144, 1147 (9th Cir. 2012) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Liberty Lobby*, 477 U.S. at 248.

The moving party bears the initial burden of establishing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party has met its initial burden, Rule 56(c) requires the nonmoving party to "go beyond the pleadings and by [his or] her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Id.* at 324 (quoting Fed. R. Civ. P. 56(c), (e)); *see also Norse v. City of Santa Cruz*, 629 F.3d 966, 973 (9th Cir. 2010) (*en banc*) ("Rule 56 requires the parties to set out facts they will be able to prove at trial."). "In judging evidence at the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence." *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir.

IV.

DISCUSSION

"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." *Lee v. Hanley*, 61 Cal. 4th 1225, 1240 (2015). The parties do not dispute the first element, that Bunn owned the property at issue. The Court therefore addresses only the other two elements.

A. Wrongful Act or Disposition of Property

A defendant wrongfully dispossesses a plaintiff of her property if he knowingly or intentionally substantially interferes with it by *either* (1) taking possession of it, (2) preventing the plaintiff from accessing it, (3) destroying it, or (4) refusing to return it after the plaintiff demands its return. California Civil Jury Instructions No. 2100. Property obtained lawfully can nonetheless be converted if the defendant refuses to turn over possession upon demand. *Cerra v. Blackstone*, 172 Cal. App. 3d 604, 609 (1985).

Here, it is uncontroverted that Defendants had possession of Bunn's property, asked her to leave while assuring they would ship her belongings to her, then failed to do so upon Bunn's request. Defendants quibble with some extraneous details, *see* Opp. at 11-12,[6] but they do not actually dispute this basic premise. Dash and Horn both state in their declarations, "At no time did I [or Poppington][7] refuse to permit Ms. Bunn to retrieve her items." Dash Decl. ¶ 8; Bunn Decl. ¶ 4. But this blanket statement does not genuinely controvert the fact that they assured Bunn they would return her items, then did not do so, even after she followed up. Even if Bunn could have gone straight to the studio to collect her items after being asked to leave Dash's house—viewing the facts in the light most favorable to Defendants—she relied upon their promise that they would ship the items to her. Perhaps at the moment Bunn left town, Defendants had not yet dispossessed Bunn of the property. But when she demanded its return a week later, as she was promised, and Defendants failed to do so, they dispossessed her of her belongings. Their failure need not have been an affirmative act, nor was Bunn required to attempt to retrieve the property herself after asking for its return, in order establish a conversion claim. *See Schroeder v. Auto Driveaway Co.*, 11 Cal. 3d 908, 918 (1974) ("Where B is in possession of the property

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[6] All page references herein are to the page numbers inserted by the CM/ECF system.

[7] Horn's declaration adds "or Poppington"—otherwise, the two statements are identical.

. . . and A demands it, and B fails to deliver it, no modern court is going to save B from being a converter on the ground that there was only a nonfeasance.") (citation omitted).

Dash and Horn attest that they made efforts to return Bunn's property through their counsel, and Defendants' counsel attempts to introduce evidence of his negotiations with Bunn's counsel after the litigation was filed surrounding the property's return. Dash Decl. ¶ 8; Horn Decl. ¶ 4; Traylor Decl. ¶¶ 2-3, Ex. A [Doc. # 123-5]. Bunn objects to this evidence as violative of Federal Rule of Evidence 408, which makes inadmissible evidence of settlement negotiations to prove or disprove the validity or amount of a claim. The objection is **OVERRULED as moot**. Even if the evidence were considered, the fact that Defendants made offers to return the property months later is immaterial. The dispossession of property need not be permanent to constitute conversion. *See Enter. Leasing Corp. v. Shugart Corp.*, 231 Cal. App. 3d 737, 748 (1991) ("[T]the fact that plaintiff regained possession of the converted property does not prevent him from suing for damages for the conversion.").

Finally, Defendants argue that Bunn has not established liability against each and all particular Defendants. Opp. at 14. The Court disagrees. It is uncontroverted that Dash and Horn together invited Bunn to the studio owned by their LLC. Bunn left her items in a locked room on property belonging to Poppington. Dash and Horn then jointly demanded that Bunn leave their house, while promising they would ship her items to her, which they did not do. These facts are sufficient to make Dash, Horn, and their corporation, Poppington, jointly and severally liable for conversion. *McCafferty v. Gilbank*, 249 Cal. App. 2d 569, 576 (1967) ("Where the conversion is the result of the acts of several persons, which, though separately committed, all tend to the same end, there is a joint conversion.") (citation omitted).

In sum, it is uncontroverted that Dash, Horn, and Poppington each participated in obtaining Bunn's property and then failed to return it upon request. This conduct satisfies the disposition element of the conversion claim.

B. Damages

Bunn claims that her conversion claim is worth $50,026,000. She reaches this sum by asserting that each of the 100,000 photographs contained in her hard drives is worth $500 a piece, and that the photography equipment and other items are worth approximately $26,000. *See* MSJ at 8-9.

As for the photographs, Bunn bases their valuation on a judgment she earned for her work in a 2000 lawsuit in the New York Supreme Court, *Bunn v. Bad Boy Entertainment Inc., et al.*, Case No. 103952/99, where the court awarded her $500 each for 80 photography slides. *See* Bunn Decl. ¶ 18, Ex. 2. In that case, the defendant lost the slides, and the parties had an agreement that there would be a charge of $500 per slide if any were lost. *Id.* at 3-4. The 80 slides had been selected as the best photographs from a photography session. *Id.* at 3.

The situation is completely different here. The 100,000 photographs are not a preselected "best"—they are Bunn's entire catalog. There is no agreement between Bunn and Defendants over the value of the photographs. That Bunn was able to sell some of her photographs for $500 does not mean that all photographs she ever took are worth $500. Some could be worth more, and likely many are worth less.

As for the physical items, Bunn simply speculates that they are worth $26,000. She lists a couple dozen items in exceedingly generic terms (*e.g.*, "PC laptop," "zoom lens," and "diamond earrings"), without providing brands, models, dates of purchase, or individual purchase prices. *See* Bunn Decl. ¶ 7. She provides some pictures of the items, which are also not very helpful in terms of assessing a value. *Id.* at ¶ 27.

The usual presumed measure of damages in a conversion claim is the fair market value of the converted property. *Lueter v. State of California*, 94 Cal. App. 4th 1285, 1302 (2002). Bunn has not established the fair market value of her converted property.

V.

CONCLUSION

In light of the foregoing, Bunn's MSJ is **GRANTED in part** and **DENIED in part**. On the first two elements of her conversion claim—her right to possession and Defendants' wrongful disposition of the property—the Court **GRANTS** summary adjudication in Bunn's favor. On the element of damages, Bunn's MSJ is **DENIED**. A triable issue remains as to the amount of damages Bunn is entitled from her claim.

The Court finds Bunn's MSJ appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15. Therefore, the April 30, 2021 hearing is **VACATED**.

IT IS SO ORDERED.

DATED: April 28, 2021

DOLLY M. GEE
UNITED STATES DISTRICT JUDGE

EXHIBIT I

Damon Dash arrested after getting $400K behind in child support payments to ex-wife Rachel Roy and ex Cindy Morales ... as music mogul claims he's penniless

- **Dash, 48, was handcuffed and taken to Bronx Family Court on Wednesday**
- **Warrant was issued in April of 2015 over $62,000 he owed Morales**
- **The music mogul was married to fashion designer Roy, 45, from 2005 to 2009 and has two daughters with her - Ava, 19, and Tallulah, 11**
- **Dash said deputies were very understanding and cooperative throughout the process**
- **Dash is currently expecting another child with fiancee Raquel Horn**
- **Dash co-founded Roc-A-Fella Records along with Jay-Z**

By ADAM S. LEVY FOR DAILYMAIL.COM
PUBLISHED: 19:17 EDT, 20 November 2019 | **UPDATED:** 09:25 EDT, 21 November 2019

Damon Dash was arrested in connection with $404,000 in unpaid child support to ex-wife Rachel Roy and ex-girlfriend Cindy Morales on Wednesday in his native **New York City**.

Dash, 48, was handcuffed and taken to Bronx Family Court amid a pair of felony warrants, the New York City Sheriff's Office told **Page Six**.

Sheriff Joseph Fucito said authorities had been 'looking to arrest [Dash] since 2015,' as a warrant was issued in April of that year over $62,000 he owed Morales.

Earlier this year, another warrant was issued over a contempt of court conviction, with the court ordering him to pay an additional $342,000.

The latest: Music mogul Damon Dash, 48, was arrested connection with $404,000 in unpaid child support to ex-wife Rachel Roy and ex-girlfriend Cindy Morales on Wednesday in his native New York City. He was snapped last year in NYC

Dash was released after he went to a Manhattan court and paid a debt of about $1 million for an outstanding warrant.

He was then taken into custody by seven deputies as he headed to handle his other warrant, he told **TMZ** Wednesday. He was then reportedly processed and transported to the Bronx Family Court to handle the outstanding remainder of his balance.

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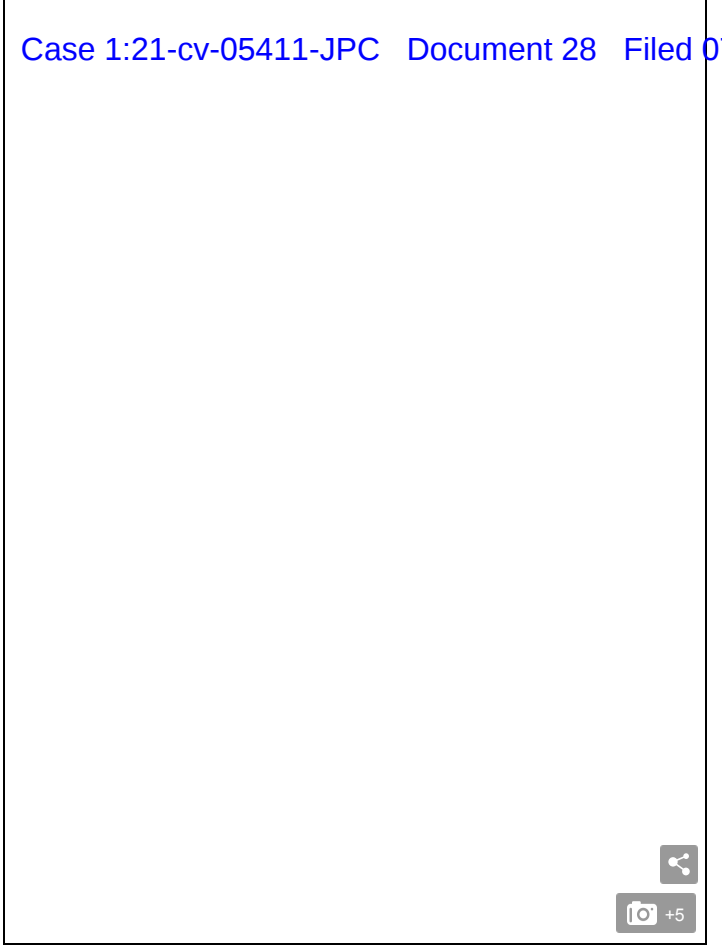
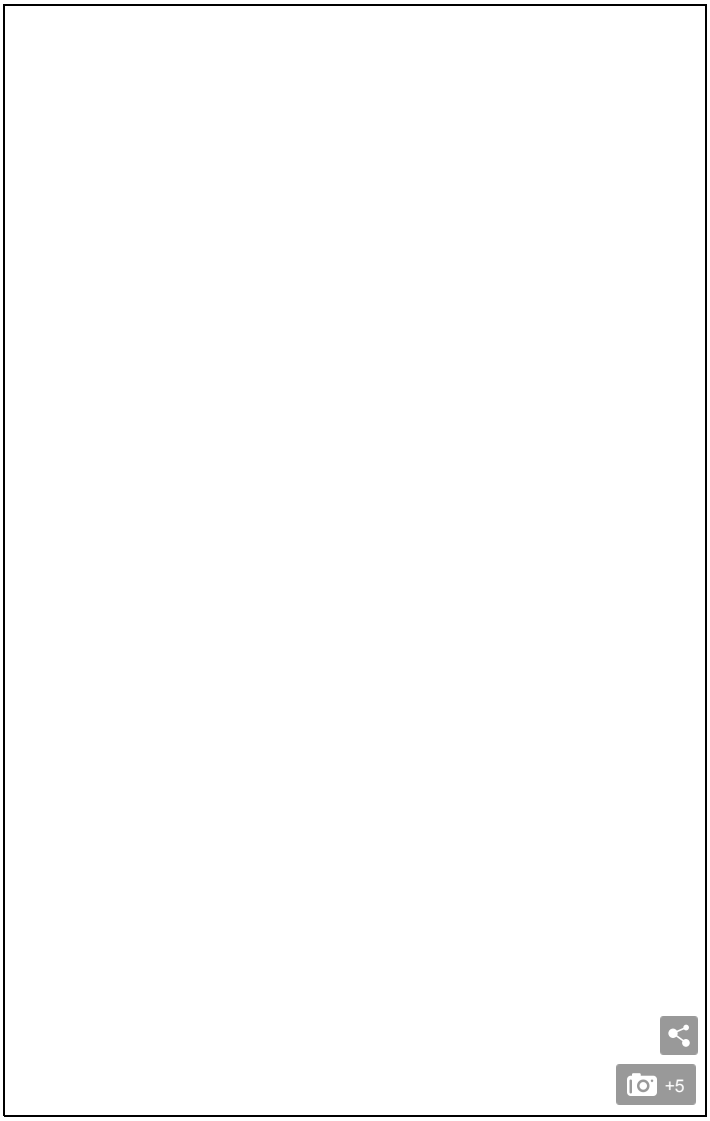
Dash told TMZ that the deputies were very understanding and cooperative in the process.

Officials had previously urged the music and fashion executive to turn himself into custody but he left New York, a police insider told Page Six.

Family: Dash is father to daughters Ava, 19, and Tallulah, 11, with ex Rachel Roy, 45. They were snapped in Italy this past summer



Out and about: Dash was snapped in Burbank this past April



Big Apple beauties: Roy and daughter Ava were snapped in NYC in January

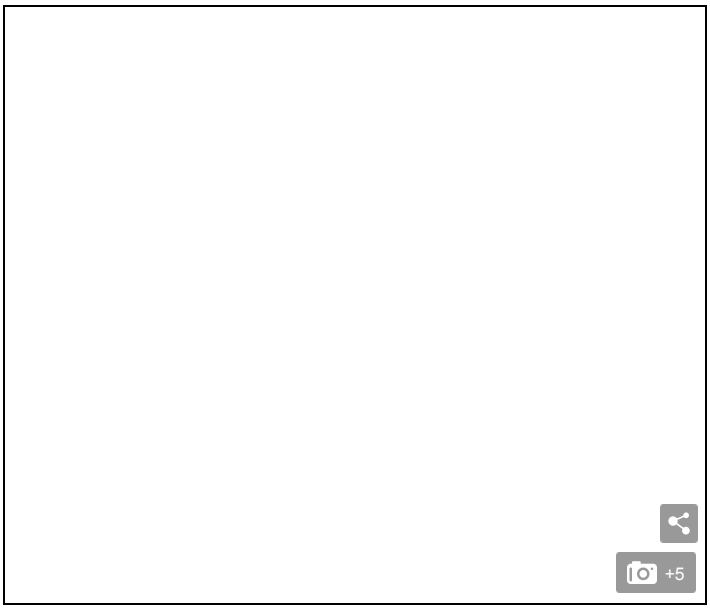
Dash, who co-founded Roc-A-Fella Records along with Jay-Z, told the court last week he's got a 'virtually nonexistent' income, and was only surviving on money from a $2 million debt owed to him by Empire creator Lee Daniels following a recent court

settlement.

Dash told the court he's strapped for cash as he's expecting another child with fiancee, Raquel Horn.

Dash was married to fashion designer Roy, 45, from 2005 to 2009 and has two daughters with her - Ava, 19, and Tallulah, 11.

He's also father to son Damon Dash Jr., 27, with ex Linda Williams, and a son named Lucky with Morales.



Industry veteran: (L-R) Dash, Suge Knight, Snoop Dogg, the late Tupac Shakur and MC Hammer were snapped at a Grammy party in February of 1996

Read more:

Damon Dash Arrested for Unpaid Child Support

Roc-A-Fella records co-founder Damon Dash arrested

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